

104TH CONGRESS
1ST SESSION

H. R. 1683

To establish a Federal cause of action for failure of State and local public employee pension plans to meet the terms of such plans, subject to differing burdens of proof depending on whether changes in the plan relating to employer contributions are subject, under the law of the principal State involved, to qualified review boards.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 1995

Mr. ANDREWS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a Federal cause of action for failure of State and local public employee pension plans to meet the terms of such plans, subject to differing burdens of proof depending on whether changes in the plan relating to employer contributions are subject, under the law of the principal State involved, to qualified review boards.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Employee Pen-
3 sion Plan Liability Act of 1995”.

4 **SEC. 2. CIVIL ENFORCEMENT OF PUBLIC EMPLOYEE PEN-**
5 **SION PLAN TERMS.**

6 (a) IN GENERAL.—A civil action may be brought, by
7 a participant or beneficiary under a public employee pen-
8 sion plan, against the plan—

9 (1) to recover benefits due to him or her under
10 the terms of the plan, to enforce his or her rights
11 under the terms of the plan, or to clarify his or her
12 rights to future benefits under the terms of the plan;

13 (2) to enjoin any act or practice which violates
14 the terms of the plan, or

15 (3) to obtain other appropriate equitable relief

16 (A) to redress violations of the terms of the plan or

17 (B) to enforce the terms of the plan.

18 (b) BURDEN OF PROOF.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), in any action brought under this section,
21 the plaintiff may prevail if the plaintiff proves his or
22 her case by a preponderance of the evidence.

23 (2) SPECIAL RULE FOR PLANS SUBJECT TO RE-
24 VIEW BY QUALIFIED REVIEW BOARDS.—In the case
25 of a public employee pension plan which meets the
26 requirements of section 3, in any action brought

1 under this section, the plaintiff may prevail only if
2 the plaintiff proves his or her case by clear and con-
3 vincing evidence.

4 (c) PLANS TREATED AS PERSONS.—A public em-
5 ployee pension plan may sue or be sued under this Act
6 as a person. Service of summons, subpoena, or other legal
7 process of a court upon a trustee or an administrator of
8 a public employee pension plan in the trustee's or adminis-
9 trator's capacity as such shall constitute service upon the
10 plan.

11 (d) JURISDICTION AND VENUE.—

12 (1) IN GENERAL.—State courts of competent
13 jurisdiction and district court of the United States
14 shall have concurrent jurisdiction of actions brought
15 under this section. The district courts of the United
16 States shall have jurisdiction without regard to the
17 amount in controversy or the citizenship of the par-
18 ties, to grant the relief provided for in subsection
19 (a).

20 (2) VENUE.—Notwithstanding section 94 of the
21 National Banking Act (12 U.S.C. 94), in any case
22 in which an action under this Act is brought in a
23 district court of the United States, it may be
24 brought in any district of the State where the plan
25 is administered, where the breach took place, or

1 where a defendant resides or may be found, and
2 process may be served in any other district where a
3 defendant resides or may be found.

4 (e) ATTORNEY'S FEES.—In any action brought under
5 this section, the court may in its discretion award a rea-
6 sonable attorney's fee and costs of action to any party who
7 prevails or substantially prevails in such action.

8 **SEC. 3. REVIEW BY QUALIFIED REVIEW BOARDS OF**
9 **CHANGES IN EMPLOYER CONTRIBUTIONS.**

10 (a) IN GENERAL.—A public employee pension plan
11 meets the requirements of this section if, under the plan,
12 changes in employer contributions are subject to review
13 by a qualified review board established for the plan as pro-
14 vided in this section. For purposes of this section, the term
15 “qualified review board” means a board—

16 (1) whose membership is determined under the
17 law of the principal State in accordance with sub-
18 section (b), and

19 (2) whose powers are determined under the law
20 of the principal State in accordance with paragraph
21 (3).

22 (b) MEMBERSHIP.—

23 (1) IN GENERAL.—The membership of a quali-
24 fied review board established for a plan shall consist
25 of 3 members selected from among individuals who,

1 by means of their education and experience, have
2 demonstrated expertise in the area of pension fund
3 management, as follows:

4 (A) one member is appointed by the Gov-
5 ernor of the State,

6 (B) one member is selected by the partici-
7 pants in the plan, by means of an election held
8 in such form and manner as shall be prescribed
9 in regulations of the Secretary of Labor, and

10 (C) one member is selected jointly by the
11 Governor and by a representative of partici-
12 pants in the plan (from a certified list of pen-
13 sion experts established in accordance with
14 paragraph (2)).

15 Each member of the board shall have 1 vote. Mem-
16 bers of the board shall serve for such equivalent
17 terms as shall be prescribed under the law of the
18 principal State.

19 (2) CERTIFIED LIST OF EXPERTS.—The Gov-
20 ernor of the State shall, for purposes of paragraph
21 (1)(C), establish and maintain with respect to each
22 public employee pension plan (for which such State
23 is the principal State) a certified list of pension ex-
24 perts meeting the requirements for membership on
25 the qualified review board. Individuals may be in-

1 cluded on such list only by agreement between the
2 Governor of the State and a representative elected
3 by participants in the plan, entered into by means
4 of collective bargaining in such form and manner as
5 shall be prescribed in regulations of the Secretary of
6 Labor.

7 (c) POWERS.—The board shall be treated as a quali-
8 fied review board for purposes of this section with respect
9 to any public employee pension plan (for which such State
10 is the principal State) only if the powers of such board
11 under the law of the principal State include review by the
12 board, for approval or disapproval by the board, of any
13 change in the terms of such plan, as a necessary pre-
14 requisite for such change to take effect, if—

15 (1) such change would have the effect of chang-
16 ing levels of employer contributions to the plan, and

17 (2) such review is requested, in such form and
18 manner as shall be prescribed in regulations of the
19 Secretary of Labor, by—

20 (A) at least one-third of the total number
21 of trustees of any trust fund forming a part of
22 the plan, or

23 (B) the head of any employee organization
24 representing at least 20 percent of the total
25 number of active participants in the plan.

1 The board may be treated as a qualified review board for
2 purposes of this section only if, under the law of the prin-
3 cipal State, any such change submitted to such review by
4 the board may take effect only upon approval of the
5 change by the board.

6 **SEC. 4. EFFECT ON OTHER LAWS.**

7 (a) IN GENERAL.—Nothing in this Act shall be con-
8 strued to alter, amend, modify, invalidate, impair, or su-
9 persede any law of a State or any rule or regulation issued
10 under any such law, except to the extent that such law—

11 (1) may now or hereafter relate to the subject
12 matter of the provisions of this Act as they apply to
13 any public employee pension plan described in sec-
14 tion 4(b)(1) and not exempt under section 4(b)(2),
15 and

16 (2) prevents the application of such provisions.

17 (b) STATE CAUSES OF ACTION PRESERVED.—Noth-
18 ing in this Act shall be construed to apply with respect
19 to State causes of action available in State courts.

20 **SEC. 4. DEFINITIONS AND COVERAGE.**

21 (a) DEFINITIONS.—For purposes of this Act—

22 (1) ADMINISTRATOR.—The term “adminis-
23 trator” means—

24 (A) the board of trustees, retirement
25 board, or similar person with administrative re-

1 sponsibilities in connection with a plan, or any
2 other person specifically so designated in con-
3 nection with any requirement of this Act by the
4 terms of the instrument or instruments under
5 which the plan is operated, including but not
6 limited to the law of any State or of any politi-
7 cal subdivision of any State, or

8 (B) in any case in which there is no person
9 described in subparagraph (A) in connection
10 with the plan, the plan sponsor.

11 (2) BENEFICIARY.—The term “beneficiary”
12 means a person designated by a participant, or by
13 the terms of a public employee pension plan, who is
14 or may become entitled to a benefit thereunder.

15 (3) EMPLOYEE.—The term “employee” means
16 any individual employed by an employer, employer
17 representative, or other person required to make em-
18 ployer contributions under the plan.

19 (4) EMPLOYEE ORGANIZATION.—The term
20 “employee organization” means any labor union or
21 any organization of any kind, or any agency or em-
22 ployee representation committee, association, group,
23 or plan, in which employees participate and which
24 exists for the purpose, in whole or in part, of dealing
25 with employers or employer representatives concern-

1 ing a public employee pension plan or other matters
2 incidental to employment relationships; or any em-
3 ployees' beneficiary association organized for the
4 purpose, in whole or in part, of establishing such a
5 plan.

6 (5) EMPLOYER.—The term “employer”
7 means—

8 (A) the government of any State or of any
9 political subdivision of a State,

10 (B) any agency or instrumentality of a
11 government referred to in subparagraph (A), or

12 (C) any agency or instrumentality of two
13 or more governments referred to in subpara-
14 graph (A).

15 (6) EMPLOYER CONTRIBUTION.—The term
16 “employer contribution” means any contribution to
17 a public employee pension plan other than a con-
18 tribution made by a participant in the plan.

19 (7) EMPLOYER REPRESENTATIVE.—The term
20 “employer representative” means—

21 (A) any group or association consisting, in
22 whole or in part, of employers acting, in connec-
23 tion with a public employee pension plan, for an
24 employer, or

1 (B) any person acting, in connection with
2 a public employee pension plan, indirectly in the
3 interest of an employer or of a group or asso-
4 ciation described in subparagraph (A).

5 (8) PUBLIC EMPLOYEE PENSION PLAN.—The
6 term “public employee pension plan” and “plan”
7 mean any plan, fund, or program which was here-
8 tofore or is hereafter established or maintained, in
9 whole or in part, by an employer, an employer rep-
10 resentative, or an employee organization, or by a
11 combination thereof, to the extent that by its express
12 terms or as a result of surrounding circumstances
13 such plan, fund, or program—

14 (A) provides retirement income to employ-
15 ees, or

16 (B) results in a deferral of income by em-
17 ployees for periods extending to the termination
18 of covered employment or beyond,
19 regardless of the method of calculating the contribu-
20 tions made to the plan, the method of calculating
21 the benefits under the plan, or the method of distrib-
22 uting benefits from the plan.

23 (9) PRINCIPAL STATE.—The term “principal
24 State” means, for any plan year with respect to a
25 public employee pension plan, the State in which, as

1 of the beginning of such plan year, the largest per-
2 centage of the participants of the plan employed in
3 any single State is employed.

4 (10) GOVERNOR.—The term “Governor”
5 means, in connection with a public employee pension
6 plan, the Governor (or equivalent official) of the
7 principal State.

8 (11) PARTICIPANT.—The term “participant”
9 means any individual who is or may become eligible
10 to receive a benefit of any type from a public em-
11 ployee pension plan or whose beneficiaries may be el-
12 igible to receive any such benefit.

13 (12) PERSON.—The term “person” means a
14 State, a political subdivision of a State, any agency
15 or instrumentality of a State or a political subdivi-
16 sion of a State, an individual, a partnership, a joint
17 venture, a corporation, a mutual company, a joint-
18 stock company, a trust, an estate, an unincorporated
19 organization, an association, or an employee organi-
20 zation.

21 (13) PLAN SPONSOR.—The term “plan spon-
22 sor” means—

23 (A) in the case of a plan established or
24 maintained solely for employees of a single em-
25 ployer, such employer,

1 (B) in the case of a plan established or
2 maintained by an employee organization, the
3 employee organization, or

4 (C) in the case of a plan established or
5 maintained by two or more employers or jointly
6 by one or more employers and one or more em-
7 ployee organizations, the association, commit-
8 tee, board of trustees, or other similar group of
9 representatives of the parties who establish or
10 maintain the plan.

11 (14) PLAN YEAR.—The term “plan year”
12 means, with respect to a plan, the calendar, policy,
13 or fiscal year on which the records of the plan are
14 kept.

15 (15) STATE.—The term “State” means any
16 State of the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, the Virgin Is-
18 lands, American Samoa, and Guam.

19 (b) COVERAGE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), this Act shall apply to any public em-
22 ployee pension plan.

23 (2) EXCEPTIONS FROM COVERAGE.—The provi-
24 sions of this Act shall not apply to—

1 (A) any employee benefit plan described in
2 section 4(a) of the Employee Retirement In-
3 come Security Act of 1974 (29 U.S.C.
4 1003(a)), which is not exempt under section
5 4(b)(1) of such Act (29 U.S.C. 1003(b)(1));

6 (B) any plan which is unfunded and is
7 maintained by an employer or employer rep-
8 resentative primarily for the purpose of provid-
9 ing deferred compensation for a select group of
10 management or highly compensated employees;

11 (C) any arrangement which would be a
12 severance pay arrangement, as defined in regu-
13 lations of the Secretary of Labor under section
14 3(2)(B)(i) of the Employee Retirement Income
15 Security Act of 1974 (29 U.S.C.
16 1002(2)(B)(i)), if the employer were an em-
17 ployer within the meaning of section 3(5) of
18 such Act (29 U.S.C. 1002(5));

19 (D) any agreement to the extent it is a
20 coverage agreement entered into pursuant to
21 section 218 of the Social Security Act (42
22 U.S.C. 418);

23 (E) any individual retirement account or
24 any individual retirement annuity within the
25 meaning of section 408 of the Internal Revenue

1 Code of 1986, or a retirement bond within the
2 meaning of section 409 of such Code;

3 (F) any plan described in section 401(d) of
4 such Code;

5 (G) any individual account plan consisting
6 of an annuity contract described in section
7 403(b) of such Code;

8 (H) any eligible State deferred compensa-
9 tion plan, as defined in section 457(b) of such
10 Code; or

11 (I) any plan maintained solely for the pur-
12 pose of complying with applicable workers' com-
13 pensation laws or disability insurance laws.

14 **SEC. 5. EFFECTIVE DATE.**

15 The preceding provisions of this Act shall apply with
16 respect to plan years beginning on or after January 1,
17 1996.

